IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 213 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HYDERHUSSAIN SIKANDARBHAI MANIAR - Applicant(s)

Versus

THE DEPUTY COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Applicant(s) : 1,
MR LR POOJARI, APP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/02/2006

ORAL JUDGMENT

1. Hyderhussain Sikandarbhai Maniar, petitioner, has filed this petition with a prayer that this Court may be pleased to issue an appropriate writ, order or direction, for quashing and setting aside the order of

externment dated 4.2.2005 passed by the Deputy Commissioner of Police, Ahmedabad – respondent No.1 herein under the provisions of Bombay Police Act as well as the order dated 16.9.2005 passed by the Deputy Secretary, Home Department, State of Gujarat confirming the order dated 4.2.2005. The petition has been filed on 6.2.2006.

2. When the matter was placed for hearing before this Court on 7.2.2006 this Court has issued Rule and the same was made returnable on 20.2.2006.

3. Pursuant to the same Mr.L.R.Poojari, learned APP appears on behalf of respondents.

4. Heard Ms.Banna S.Dutta, learned advocate for the petitioner. She has stated that though there are several grounds, she urged only one ground i.e., delay in passing the order. The learned advocate for the petitioner stated that the authority has issued show-cause-notice against the petitioner under the provisions of Bombay Police Act on 19.7.2003. The petitioner has filed reply (undated) but the same has been received by the department on 16.2.2004 which has

been emerged from the record of the Government which has been relied upon by learned APP in this behalf. Thereafter the authority has passed the order on 4.2.2005, the authority has not given any reasons as to why there is delay in passing the order, therefore the delay in passing the order both unexplained, unwarranted and unjustified.

5. Being aggrieved and dissatisfied with the said order, the petitioner has filed appeal against the appellate authority under Sec.60 of the Bombay Police Act.

6. It may be noted that though the petitioner has not raised that point before the authority but the appellate authority has not considered the same and confirmed the order of externing authority dated 4.2.2005 in this behalf.

7. Learned advocate for the petitioner has relied upon the judgment of this Court in Special Criminal Application No.1451 of 2005 in the matter of Dilaji Bharthaji Vihol Vs. Deputy Commissioner of Police and others decided by this Court (Coram: K.M.Mehta, J.) on

1.12.2005, where this Court has allowed the petition only on the ground that there is delay in passing the order. The ratio of the said judgment squarely applies to the facts of this case.

8. Mr.L.R.Poojari, learned APP has tried to rely upon the order passed by both the authorities, namely, externing authority as well as appellate authority.

9. I have considered the rival submissions in this behalf. The facts of this case namely the show-cause-notice issued on 19.7.2003, the reply filed on 16.2.2004 and order has been passed on 4.2.2005, so there is unexplained, unjustified delay in passing the order. In my view the matter is fully covered by the judgment of this Court in Special Criminal Application No.1451 of 2005 decided on 1.12.2005.

10. For the foregoing reasons, this Special Criminal Application is allowed. The impugned order of externment dated 4.2.2005 passed by the Deputy Commissioner of Police, Zone-6, Ahmedabad City is ordered to be quashed and set aside. The impugned order dated 16.9.2005 passed by the Additional Secretary,

Home Department, State of Gujarat, confirming the order of externment is also ordered to be quashed and set aside. Rule is made absolute. Direct service is permitted.

(K.M. Mehta, J.)

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